83-289

In the Supreme Court of the United States

OCTOBER TERM, 1983

No.

RAPIDES PARISH SCHOOL BOARD, ET AL.,
Petitioners,

versus

VIRGIE LEE VALLEY, ET AL.,
Respondents,

AND

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the District Court went beyond the scope of its jurisdiction and authority in closing, over the objection of the School Board, the only school in each of two (2) rural communities of Rapides Parish when no party to the litigation had ever requested the closure of such schools and when less harsh remedies were available to the Court and recommended by the School Board.

2. Whether the District Court erred in assigning responsibility for "white flight" in the Cheneyville community to the School Board without any evidence whatsoever of any discriminatory or segregative act of the School Board causing same.

3. Whether the District Court erred in substituting its own "expert" judgment for that of the duly elected School Board and its Superintendent and staff, the other parties to the litigation, and the desegregation experts employed by parties to the litigation.

PARTIES TO THE PROCEEDING

PETITIONERS:

(1) Rapides Parish School Board, a political subdivision of the State of Louisiana.

(2) The individual members of the Rapides Parish School Board: Douglas A. Jenkins, Euell Williams, Col. George C. Duncan, Terry L. "Buddy" Farrar, Israel Curtis, Mrs. JoAnn W. Kellogg, Louis V. Crenshaw, Charlie D. Holloway, A. M. Martin, and the Superintendent of Schools, Mr. E. Allen Nichols.

(3) Clyde Holloway, et al., in intervenor below and a petitioner herein.

RESPONDENTS:

(1) Virgie Lee Valley and others representing the class of black citizens in Rapides Parish.

(2) United States of America.

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Petitioners, the Rapides Parish School Board, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on March 30, 1983.

OPINIONS BELOW

The March 30, 1983 opinion of the Court of Appeals is reported at 702 F.2d 1221 and is reprinted in the separate Joint Appendix to this Petition, pp. 1a-21a. The May 18, 1981 opinion of the Court of Appeals, reversing the District Court and remanding, is reported at 646 F.2d 925 (App., infra,

42a-75a). The District Court's Preliminary Opinion of June 6, 1980 is unreported (App., infra, 95a-98a). The District Court's August 6, 1980 opinion is reported at 499 F. Supp. 490 (App., infra, 82a-94a). The District Court's July 22, 1981 opinion on remand is unreported App., infra, 27a-40a).

JURISDICTION

The judgment of the Court of Appeals was entered March 30, 1983. Forest Hill Intervenors' petition for rehearing and rehearing en banc was denied on April 29, 1983 (App., infra, 24a-25a). Rapides Parish School Board's petition for rehearing and rehearing en banc was denied on May 26, 1983 (App., infra, 26a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth Amendment, and the Tenth Amendment to the United States Constitution. It also involves the laws of the State of Louisiana relating to the responsibility and authority of school boards for operating and maintaining school systems in the State of Louisiana, including particularly Section 81 of Title 17 of the Louisiana Revised Statutes.

STATEMENT OF THE CASE

1. Introduction

This is a petition of the Rapides Parish School Board and its Superintendent and staff. The Rapides Parish School Board

is a political subdivision of the State of Louisiana charged with the responsibility of operating and maintaining a public school system for the citizens and children of Rapides Parish. The Rapides Parish School Board, hereafter sometimes referred to simply as the School Board, is composed of nine (9) members, six (6) white males, two (2) black males, and one (1) white female, elected from single-member districts within Rapides Parish.

In exercising its responsibility to maintain and operate a public school system for all children of Rapides Parish, the School Board is given authority by the State of Louisiana under Section 81 of Title 17 of the Louisiana Revised Statutes to determine how many schools it shall operate, where those schools shall be located, and whether any of its schools should be closed. Allen Nichols, a professional educator with many years of experience in administering public school systems, is the Superintendent of Schools duly appointed by such School Board.

The respondents are Virgie Lee Valley, et al., representing the class of black citizens in Rapides Parish and the United States, intervenor.

Clyde Holloway, et al. are also intervenors representing both black and white citizens, parents, and children of the rural community of Forest Hill. The Forest Hill intervenors have also filed a petition for writ of certiorari with this Court seeking relief from the order of the District Court which deprived them, as well as the black and white citizens of the Cheneyville community, of their respective community schools. The Rapides Parish School Board wholeheartedly supports the position of the Forest Hill intervenors and has joined

with them in filing a Joint Appendix with regard to their respective petitions before this Court.

As indicated, the School Board joins with the Forest Hill intervenors in seeking relief in this Court. However, the position and approach of the School Board is somewhat different from that of the Forest Hill intervenors. The Forest Hill parents are seeking to regain the use of their community school, which is a modern physical facility, and which has served their community for many, many years not only as a school, but as the hub of community activities.

Although the Rapides Parish School Board and its Superintendent agree with the Forest Hill intervenors, the interest of the School Board, due to its responsibility under state law to operate a parish-wide school system, is broader than that of the Forest Hill intervenors and includes the citizens, parents, and children, both black and white, of the likewise rural Cheneyville community who have also unnecessarily lost their community school under the District Court's order. In addition, the School Board respectfully submits that the District Court has unnecessarily and inappropriately intruded into the responsibility, jurisdiction and authority of the State of Louisiana and this, its political subdivision, by closing these two (2) schools over its objection, particularly when no party to the litigation has ever requested such relief and other constitutionally acceptable and far less drastic alternatives were available.

2. Pertinent Geographical and Physical Facts

Rapides Parish is located in the virtual center of the state. It has both metropolitan and rural areas. The economy of the

parish is based primarily on agriculture and timber. The parish is rectangular, almost square, in shape and is split slightly above center on a northwest to southeast line by the Red River. It is a geographically large parish and most of its area would be classified as rural.

The parish contains only one (1) large city, the City of Alexandria, which is located on the south bank of the Red River in the north central area of the parish. Directly across the Red River from the City of Alexandria is the town of Pineville and just north of it is the town or community of Tioga. The City of Alexandria is located in Wards 1 and 8 of Rapides Parish. Pineville is located in Ward 9 and Tioga is located in Ward 10. The only relief specifically requested by any party in the District Court was with respect to schools in Wards 1, 8, and 9.[1]

Although the City of Alexandria (Wards 1 and 8) and Pineville and Tioga directly across Red River (Wards 9 and 10) constitute the Alexandria metropolitan area, there are several outlying rural communities which have always had their own schools. These rural communities either have one school which serves all students, black and white, in grades K-12, or, where the community had two (2) schools, the two (2) schools have been paired in previous years so as to also serve all students, black and white, through grades K-12.

Boyce, Louisiana is located approxiately 17 miles northwest of Alexandria and has two (2) schools, one serving grades K-7 and the other serving grades 8-12. South of Boyce and west of Alexandria is the community of Oak Hills in Ward 5,

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[1] As mentioned hereinafter, the towns of Cheneyville and Forest Hill, and their respective schools, are located in Wards 3 and 4, respectively, in the extreme southeast corner of the parish.

which has one (1) school serving grades K-12 for all students, black and white, in the Oak Hills community. South-southwest of Oak Hills is the community of Plainview in Ward 6 in the southwest corner of the parish, which also has one (1) school serving all students in the Plainview community in grades K-12. The community of Glenmora is located in the south central portion of the parish in Ward 4 and has an elementary school and a high school which serve all students in grades K-12 who live in the Glenmora community.

Northeast of Alexandria in Ward 11 is the community of Buckeye, which has two (2) schools with one serving grades K-6 and the other serving grades 7-12. South of Buckeye and east of Alexandria is the Ruby Wise School, which serves grades K-5 in that area. South of Ruby Wise and east of Alexandria is the community of Poland, which had one (1) school serving all students in the Poland community grades K-12, but which has been reduced to a K-5 by the District Court's order.

Although some of the schools in the above-mentioned rural communities could be considered as racially identifiable under the standards employed by the District Court, only three (3) of those rural communities were even minimally affected by the District Court's order and then only to the extent necessary to assist in the desegregation of the Alexandria schools. Some of the junior high age white students in Buckeye were reassigned to Jones Street Junior High in Alexandria. The same is true of the Ruby Wise and Poland schools, which were changed to elementary schools.

The only remaining rural communities, Cheneyville, Lecompte, and Forest Hill, are located in the southeast corner

of the parish. The Cheneyville community is located in the extreme southeast corner of the parish on Highway 71 more than 26 miles from Alexandria. The Lecompte community is located 10 miles north and west of Cheneyville on Highway 71 and 16 miles from Alexandria. The Forest Hill community is located west of Lecompte and 18 miles southeast of Alexandria.

Like the other rural communities mentioned above, the schools in these three (3) rural communities had also been desegregated over the years and under prior orders of the District Court. First, when the Rapides High School was opened across Highway 71 from Lecompte, the high school students, black and white, in all three (3) communities were assigned to Rapides High School grades 10-12. Later, under a Consent Decree approved by the District Court on September 15, 1976, the two (2) schools in Lecompte were paired with Lecompte Elementary School, the formerly all white school, serving grades K-5 and Carter C. Raymond, the formerly all black school, serving grades 6-9. In Cheneyville, the Consent Decree closed the formerly all white school, Cheneyville High School, and left the formerly all black school, Lincoln Williams, to serve all children in Cheneyville, grades K-8. The Forest Hill School also served all children, black and white, in the Forest Hill community for grades K-8.

Although the District Court's present order had no effect on most of the other rural communities, the District Court, on its own motion, without notice to any party, and, without any request or suggestion for such remedy by any party, imposed the harshest remedy available—the closing of the only school in Cheneyville and the only school in Forest Hill. See District Court's preliminary opinion of June 6, 1980 (App.,

infra, 95a-98a), the District Court's August 6, 1980 opinion and final desegregation plan (499 F. Supp. 490 - App., infra, 82a-94a) and the District Court's July 22, 1981 opinion on remand (App., infra, 27a-40a).

3. Brief Procedural History

This school desegregation case was last before the Court of Appeals in 1971 when it was remanded to the District Court for development of further desegregation. After the District Court acted on remand, there was little further action at the District Court level until the United States filed a motion for supplemental relief in 1974.

Although the 1974 motion of the United States requested parish-wide or system-wide relief, the primary thrust of the motion was with regard to the schools located in the metropolitan area of the City of Alexandria, Wards 1 and 8 on the south side of the Red River and Wards 9 and 10 directly across the Red River. Here, for the first time in this school desegregation case, the United States brought in an expert in formulating school desegregation plans, Dr. Warren B. Buford.[2]

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[2] Dr. Buford's qualifications as indicated by his VITA and deposition include being Director of the Beaufort Center and Director of East Coast Academic Operations for Pepperdine University; extensive experience with school desegregation beginning in 1969, at which time he was a member of the faculty of the University of South Carolina and assigned to the President as Director of University Curriculum Development through the HEW Title-4 Assistance Center of the University of South Carolina in which capacity he offered technical assistance to school boards of 30 court-ordered districts in the State of Mississippi. Dr. Buford also served as the Government's expert witness on desegregation in Shelby County Tennessee, Jackson, Mississippi, and Beaumont, Texas. He had also been retained as an expert in civil rights matters by the American Friends Service Committee and the American Civil Liberties Union. (United States deposition of Dr. Buford of April 16, 1975, Pages 5-8). It is also our understanding that Dr. Buford assisted in development of the desegregation plan which was before this Court in *Swann v. Charlotte-Mecklinberg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971).

This 1974 motion of the United States, together with the plans[3] prepared by, and testimony of Dr. Warren B. Buford, plus considerable discussion and negotiations between the parties, resulted in a Consent Decree approved by the District Court on September 15, 1976, desegregating the schools in taxing district 61 (Wards 3 and 4) and the communities of Cheneyville, Lecompte, and Forest Hill. (Original record, Volume 6, p. 1730.) This Consent Decree assigned all high school students in all three (3) communities to Rapides High School located just outside of Lecompte on Highway 71. It closed the formerly all white school in Cheneyville, Cheneyville Elementary, and assigned all students, black and white, in grades K-8, to the remaining previously all black school in Cheneyville, Lincoln Williams. The two (2) schools in Lecompte were paired, with Lecompte Elementary serving grades K-5 and Carter C. Raymond serving grades 6-8 for all students, black and white, in the Lecompte community. The Forest Hill School in the Forest Hill Community served all students, black and white, in the Forest Hill community in grades K-8.

The Rapides Parish School Board operated under the terms of this Consent Decree until August 6, 1980, when the District Court, on its own motion, ordered a new desegregation plan for Rapides Parish. That order was subsequently reaffirmed by the District Court after the Fifth Circuit remanded the case to it for explanation of its decision to close the schools in question.

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[3] Dr. Buford prepared two alternative desegregation plans for the schools in the Cheneyville, Lecompte, and Forest Hill area. Both plans proposed to close the previously all white Cheneyville Elmentary School and leave the previously all black Lincoln Williams Elementary School open to serve all children in Cheneyville in grades K-5. Both plans also recommended that Forest Hill School remain open, with that school serving grades K-8 in one plan and K-5 in the other.

REASONS FOR GRANTING THE WRIT

Introduction

This case is before this Court because the Rapides Parish School Board, the duly elected representatives of the citizens of Rapides Parish, Louisiana, who are charged with the responsibility of operating and maintaining a public school system for the children of Rapides Parish, sincerely believe that the District Court, as now affirmed by the Court of Appeals, has impermissibly usurped its responsibility and authority contrary to the principles established by this Court and generally followed by the Circuit Courts of Appeal. Although petitioners are aware that the reservation of educational matters to the state by the Tenth Amendment to the United States Constitution cannot stand in the way of enforcement of the Equal Protection Clause of the Fourteenth Amendment, they believe it is also clear that the federal judiciary should not intrude into the responsibility and authority of the state except where clearly necessary to carry out the mandate of the Fourteenth Amendment.

In the instant case, it was clearly unnecessary for the District Court to usurp the authority of this School Board to decide where schools should be located and whether or not they should be closed[4] as no party to this litigation had re-

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[4] For example, L.R.S. 17:81 provides, in pertinent part, that ". . . each parish school board shall determine the number of schools to be opened, the location of the school houses, . . . the board shall see that the provisions of the state school laws are complied with . . . Parish school boards may receive land by purchase or donation for the purpose of erecting school houses; provide for and secure the erection of same . . . and make repairs and provide for the necessary furniture, equipment and apparatus . . . They may change the location of a school house, sell or dispose of the old site, or of any site which for any reason can no longer be used or which is unused and unnecessary or unsuitable as such . . ." (Act 100 of 1922, as amended).

quested that it do so, no desegregation expert had ever suggested that it do so, and there were constitutionally acceptable alternatives available to the District Court. Many of these constitutionally acceptable alternatives were filed with the District Court by the School Board itself.

We respectfully submit that the District Court, now affirmed by the Court of Appeals, exceeded the scope of its authority and jurisdiction because it misunderstood and/or misapplied the reasoning and principles established by the decisions of this Court in (1) providing a remedy or relief in an area of the parish where a remedy had previously been imposed and no party, or expert of any party, had ever requested or suggested such second-time-around remedy; (2) concluding, as a matter of law, that the school system could not have even one school whose student body was predominantly black and racially identifiable; (3) holding that a predominantly black school [Lincoln Williams] must be closed because of the District Court's perceived fear that an insufficient number of white students would attend that school; (4) holding, as a matter of law, that a predominantly white school [Forest Hill] must be closed to offset the closing of a predominantly black school [Lincoln Williams] in order to balance the burden of desegregation;[5] (5) assessing the School Board with the responsibility for "white flight", which had occurred in the Cheneyville and Lecompte communities in previous years; (6) rejecting the constitutionally viable alternatives preferred by the local School Board and offered by its members to the District Court for consideration. These

[5] The District Court apparently overlooked the fact that it had previously, by virtue of its 1976 Consent Decree, closed only the formerly all white school in the Cheneyville community, Cheneyville High, leaving open only the formerly all black school, Lincoln Williams.

errors of law by the District Court, now finally affirmed by a split decision of the Fifth Circuit Court of Appeals, raise grave questions for the future with regard to the law of school desegregation.

In the context of the many important landmark decisions of this Court in this area of constitutional law, this case, involving the closing of only two (2) small schools in two (2) small rural communities in a rural parish of the State of Louisiana, may appear to some to be so insignificant as to not merit the time and attention of the highest court of the land. The principles of law involved in this case are so important, however, that this Court should not turn its back to them. Rather, the Court should seize upon this opportunity to provide the lower courts with further guidance as to the proper scope of, and limits to, the authority and jurisdiction of federal district courts in school desegregation cases.

In 1979, both private plaintiffs and the United States filed additional motions for further relief directed primarily at the remaining one-race, or racially identifiable, schools in the Alexandria metropolitan area. Although plaintiff's motion vaguely referred to a parish-wide plan, the Government's motion complained only of the schools in Wards 1, 8, and 9, and the desegregation plan prepared by its new desegregation expert, Dr. Gordon Foster, covered only those schools.

After various hearings, status conferences, etc., trial was held on April 29 and 30, 1980 at the conclusion of which the Court took all matters under advisement. The Court issued a preliminary opinion on June 6, 1980 (App., infra, 95a-98a) declaring that the Court would draw its own plan, and issued its final judgment on August 6, 1980 ordering implementa-

tion of a new parish-wide desegregation plan which again affected the schools in Cheneyville, Lecompte, and Forest Hill. 499 F. Supp. 490 (App., infra, 82a-94a).

The Court of Appeals unanimously affirmed in part, reversed in part, and remanded to the District Court for reconsideration of its closure of the Lincoln Williams and Forest Hill Schools, saying ". . . We cannot lend our sanction so easily, however . . ." to the closure of excellent school facilities.

Acting on remand, the District Court permitted the Forest Hill citizens to intervene and held a hearing for consideration of any possible alternatives to its plan for the Cheneyville, Lecompte, and Forest Hill communities. Both the School Board and the Forest Hill intervenors suggested alternative plans to the District Court. However, on July 22, 1981, the Court below issued its opinion and judgment on remand, maintaining its same position with respect to the closure of the schools, etc. in those three (3) communities. (App., infra, 28a-40a). The Court of Appeals has now affirmed the District Court by a two to one vote with Chief Judge Clark dissenting (App., Infra, 1a-23a). It is that decision that prompts this Petition for Writ of Certiorari.

I. THE FIRST FUNDAMENTAL ERROR OF THE DISTRICT COURT WAS ITS CONCLUSION THAT, AS A MATTER OF LAW, A DESEGREGATION PLAN MUST BE DESIGNED TO ACHIEVE THE GREATEST AMOUNT OF INTEGRATION RATHER THAN TO ELIMINATE ANY DENIAL OF EQUAL PROTECTION BY THE STATE BECAUSE OF RACE, COLOR, CREED, OR NATIONAL ORIGIN.

The basic thrust of this Court's decisions in this area of the law has always been, and still is, to carry out the mandate of the Fourteenth Amendment that no state (nor its agencies such as local school boards) shall deny to any citizen the equal protection of the law. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed.2d 873 (*Brown I*-1954); *Brown v. Board of Education*, 349 U.S. 294 (*Brown II*-1955); *Swann v. Charlotte-Mecklinberg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974); and *Austin Independent School District v. United States*, 429 U.S. 990, 50 L.Ed.2d 603, 97 S.Ct. 517 (1977); and *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 24 L.Ed.2d 19, 90 S.Ct. 29, rehearing denied 396 U.S. 976, 24 L.Ed.2d 447, 90 S.Ct. 437, among others.

In *Brown I*, the Court held the old doctrine of "separate but equal" to be inherently unequal and prohibited the states from assigning students to particular schools solely because of their race. In *Alexander*, *supra*, the Court defined a unitary school system as one in which no child was excluded, directly or indirectly, from any school in the system because of his race, color, or national origin.

Although the Court has expanded that doctrine over the years to include removal of the remaining vestiges of the old dual system and created a suspicion with regard to the continued existence of one-race schools, *Swann*, *supra*,[6] it has gone no further and has flatly rejected the conclusion of law espoused by the District Court that,

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[6] The Court also held that a District Court had no authority to seek a racial balance in the schools and that the existence of a few one-race schools within a school district does not necessarily indicate a constitutional violation. *Swann*, 28 L.Ed.2d 554 at 571 and 572.

> ". . . There is **one all encompassing purpose**; the adoption of a plan which **achieves the greatest amount of integration** with a reasonably assured prospect of success . . ." (Emphasis added). (District Court's August 6, 1980 Opinion, App., infra, 82a-94a at 83a.)

This conclusion of law, upon which the District Court based the remainder of its opinion and plan, would appear to be clearly contrary to the principles established by this Court in the cases cited above. The purpose of the Fourteenth Amendment guarantee of equal protection is not to achieve racial integration in public schools, but is instead to offer equal educational opportunity without regard to race. *Milliken, supra.*

The attempt of the District Court to achieve the greatest amount of integration in the public schools of Rapides Parish, in contravention of the legal principles discussed, should be rejected by this Court.

II. THE DISTRICT COURT FURTHER COMMITTED FUNDAMENTAL ERROR WHEN IT, *EX PARTE*, AND OVER THE OBJECTION OF THE LOCAL SCHOOL BOARD, IMPOSED THE HARSHEST REMEDY AVAILABLE—A REMEDY WHICH HAD NOT BEEN REQUESTED, OR EVEN SUGGESTED, BY ANY PARTY TO THE LITIGATION.

As indicated heretofore, the previous 1974 motion of the United States resulted in a Consent Decree approved by the District Court on September 15, 1976, which desegregated the schools in the Cheneyville-Lecompte-Forest Hill area. This Consent Decree basically adopted a combination of two (2) desegregation plans for this area developed by the desegregation expert employed by the United States, Dr. Warren B.

Buford. This Decree closed one (1) of the two (2) schools in Cheneyville, leaving only the formerly all black Lincoln Williams school to serve all Cheneyville students in grades K-8. It paired the two (2) schools in Lecompte with the formerly white school, Lecompte Elementary, serving grades K-5 and the formerly all black school, Carter C. Raymond, serving grades 6-8. The Forest Hill School, like Lincoln Williams, would serve all students, black and white, in the Forest Hill area in grades K-8. The high school students, grades 9-12, black and white, in all three (3) communities would attend the Rapides High School located across Highway 71 from Lecompte.

The 1979 motion of the United States, basically supported or adopted by private plaintiffs, sought relief with respect only to the schools located in the Alexandria metropolitan area, Wards 1, 8, and 9. (See District Court preliminary opinion, App., infra, 95a.) It would seem apparent that the Government's 1979 motion did not seek relief in Wards 3 and 4 because of its previous participation in the 1976 Consent Decree which had already desegregated the schools in that area.

Consequently, during the trial of this case, there was no desegregation plan before the District Court regarding the schools in Cheneyville, Lecompte, and Forest Hill and no party to this litigation suggested or expected a decision which would affect those schools. It was not until the District Court's preliminary opinion of June 6, 1980 that the Court indicated it might go beyond Wards 1, 8, and 9 when it declared that ". . . I also feel that I am the best expert that I know and I intend to draw this plan myself. . . ." (App., infra, at 97a.)

The District Court, in going beyond the requested relief, committed several fundamental errors of law and procedure. First, since there was no discussion of the schools in Wards 3 and 4 during the trial, there was no evidence before the Court that any constitutional violation existed in the Cheneyville-Lecompte-Forest Hill Schools. The decisions of this Court have always held ". . . that judicial powers may be exercised only on the basis of a constitutional violation . . . the nature of the violation determines the scope of the remedy. . . ." *Swann, supra*, 28 L.Ed.2d at 566, 567. There is no decision of this Court to the contrary. The District Court had no right or authority to presume a violation with respect to these schools in the absence of any evidence, or even allegation, that a violation existed and should not, therefore, have imposed this harshest of remedies on the citizens of those communities.

Concededly, it might have been different under some decisions, if the District Court had found it necessary to utilize white bodies from the Cheneyville-Lecompte-Forest Hill area in order to desegregate the one-race black schools in downtown Alexandria. This was its purpose in reassigning white students from the Buckeye, Ruby Wise, and Poland schools to Jones Street Junior High in Alexandria. However, that this is not the case is clearly shown by two (2) statements contained in the District Court's August 6, 1980 opinion and plan:

> ". . . The tables immediately below demonstrate that integration of the black student population in Alexandria has no reasonable prospect of success (it is overwhelmingly black) unless the entire metropolitan area of Alexandria-Pineville-Tioga and Ball is incorporated into the plan. . . ." (All located in Wards 1, 8, 9, and 10.)

And,

> ". . . The evidence establishes that there is no concentration of white students available in the Cheneyville area to integrate Lincoln Williams Elementary (92.9% black). Consequently, Lincoln Williams (K-8) must be closed and its student body must be assigned to other schools in the Lecompte area. . . ."

Thus, it is clear that the District Court closed Lincoln Williams solely because it had become 92.9% black over the intervening years and, as there was no evidence before the Court that this enrollment was the result of a constitutional violation, the Court lacked the authority to order any remedy and, more specifically, lacked the authority to impose the harsh remedy of closing the only school in Cheneyville.

If the second above-quoted statement of the District Court represents the basis on which the District Court imposed this extremely harsh remedy, petitioners respectfully submit that it is further in error in the following respects: (1) it holds the School Board legally responsible for the exodus of many white students from the Cheneyville community during the past several years; (2) it erroneously concludes that the decisions of this Court prohibit the existence of **any** racially identifiable black schools; and (3) it improperly seeks to reach some (though unspecified) racial balance in the Ward 3 and 4 schools. It would appear clear that the decisions of this Court are to the contrary with respect to all three (3) issues.

Although it is true that local school authorities cannot use the fear of white flight to stand in the way of desegregation, *United States v. Scotland Neck Board of Education*, 407 U.S. 484, 491 (1972), it is equally clear that, absent some deliberate action on the part of the local school authorities which caused such white flight, they cannot be held legally

responsible for it. *Swann, supra*; *Milliken, supra*; *Austin, supra*. See also *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 49 L.Ed.2d 599, 96 S.Ct. 2697 (1976); *United States v. Southpark Independent School District*, 566 F.2d 1221 (5th Cir. 1978); *United States v. Texas Educational Agency*, 606 F.2d 518 (5th Cir. 1979) and *Ross v. Houston Independent School District*, 699 F.2d 218 (5th Cir. 1983).

As a matter of fact, it is equally unacceptable for a District Court to rely on fear of white flight. *United States v. Texas Educational Agency*, 467 F.29 848, 871-72 (5th Cir. 1972).

In *Austin, supra*, Mr. Justice Powell noted in his concurring opinion, 50 L.Ed.2d 603, 605, that,

> " '. . . The principal cause of racial and ethnic imbalance in urban public schools and across the country—North and South—is the imbalance in residential patterns . . .' '. . . such residential patterns **are typically beyond the control of school authorities.** For example, discrimination in housing—whether public or private— **cannot be attributed to school authorities** . . .' '. . . economic pressures and **voluntary preferences** are the primary determinants of residential patterns. . . .' " (Emphasis added.)

See also *Pasadena, supra*, where this Court said,

> ". . . The District Court **apparently believed it had authority to impose this requirement** even though subsequent changes to the racial mix in the Pasadena schools might be **caused by factors for which the defendants could not be considered responsible.** Whatever may have been the basis for such a belief in 1970, in *Swann* the Court cautioned that 'it must be recognized that there are limits'

> beyond which a Court may not go in seeking to dismantle a dual school system. Id., at 28, 28 L.Ed.2d 554, 91 S.Ct. 1267. These limits are in part tied to the **necessity of establishing that school authorities have in some manner caused unconstitutional segregation**, for 'absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis.' Ibid. . . . having once implemented a racially neutral attendance pattern in order to remedy the perceived constitutional violations on the part of the defendants, **the District Court had fully performed its function of providing the appropriate remedy** for previous racially discriminatory attendance patterns. . . ." (Emphasis added)

That this is exactly what the District Court did, and erroneously reaffirmed on remand, is clearly shown by the following language of the District Court found in its July 22, 1981 decision on remand on this very issue:

> "There has been a **gradual decline of student population at Cheneyville** area (Cheneyville formerly had a white high school); and **an almost complete exodus of white students** from Lincoln Williams **after the white school was integrated with Lincoln Williams in 1975.** Poland is the only majority white school district accessible to Lincoln Williams. There was absolutely no likelihood that these students would attend Lincoln Williams when the whites in the Lincoln Williams district had already refused to do so. It was our finding that there was no reasonable prospect that Lincoln Williams could be integrated by clustering or pairing. **Consequently, we determined that Lincoln Williams must be closed.**" (Emphasis added.) (App., infra, 27a-40a, at 29a.)

Obviously, the District Court was well aware of the prior Consent Decrees which desegregated the schools in this area

of the parish in 1975-76. It also noted the "decline" and "exodus" of white students from this area of the parish since that time. It then, however, erroneously placed responsibility for such student loss on the School Board in spite of the fact that there was no evidence whatsoever before the Court that such flight was caused by any subsequent segregative act on the part of the School Board or that the School Board had done anything other than faithfully implement the District Court's orders.

On appeal, after the District Court's decision on remand, the Court of Appeals rather blithely ignored this Court's recognition of the fact that neither the School Board nor the District Court can prevent citizens from physically moving their residence to a new school zone in the district, or from moving to a completely new school system, or from abandoning public schools in favor of private schools. (App., infra, 6a-9a, including footnotes 6, 7, and 8). In doing so, the Court of Appeals first erred in approving the District Court taking into consideration ". . . the likely reoccurrence of the 'white flight' phenomenon . . ." and then attempted to justify same by saying ". . . no objection has been interposed to the Court's finding in this regard. . . ." And that ". . . we cannot gainsay its [the District Court] judgment that pairing or clustering with Poland would 'in practice produce not more but less desegregation'. . . ." App., infra, 7a, Footnote 6.) It sounds nice to say that ". . . no objection has been interposed to the Court's finding . . ." but completely misses, or misrepresents, the point. The School Board clearly recognized ". . . the likely reoccurrence of the 'white flight' phenomenon . . ." and urged the District Court to leave these already desegregated schools alone. At the very least, the School Board recognized that there would be far more re-

occurrence of "white flight" if the Forest Hill School were shut down. Why did the lower courts not defer to the better judgment of the local school authorities on this matter?

The Court of Appeals then erred again, and added a new twist to the legal principles previously enunciated by this Court. The appellate court held that, because the **entire** school system had not yet been declared **completely** unitary and because there were some vestiges of the old dual system still remaining in the schools in Alexandria, it was proper for the District Court to hold the local School Board responsible for the "white flight" which had already occurred in the Ward 3 and 4 area after the 1975-76 Consent Decree (App., infra, 9a, Footnote 8). If this rule becomes the law of the land, it will mean that no school system can become unitary as long as white citizens, dissatisfied with the Federal Court's reassignment of their children to schools, can freely move their residence to other school districts or enroll their children in private schools, or, the entire school system becomes black.

Although the Court of Appeal's March 30 opinion and decision cites *Ross v. Houston Independent School District, supra*, as being in accord with its conclusion, petitioners respectfully submit that it is not. In that decision, the Fifth Circuit held that local school authorities cannot be held responsible for white flight and demographic changes. As the Fifth Circuit stated:

> ". . . While those charged with desegregation must not shrink from the threat of white flight, school officials who have taken effective action **have no affirmative Fourteenth Amendment duty to respond to the private actions of those who vote with their feet**. . . . " (Emphasis added.) (699 F.2d 218 at 225)

It is inconceivable that the citizens, white and black, of Forest Hill should have to lose their community school simply because many of the citizens of Cheneyville and Lecompte have chosen to "vote with their feet" and leave the Rapides Parish school system.

Although the Court of Appeals cited jurisprudence holding that the existence of a few racially identifiable schools within a school system does not necessarily indicate a constitutional violation, it quickly bypassed those decisions by concluding that the District Court's harsh remedy of closing these two (2) schools was a reasonable alternative to leaving Lincoln Williams as a racially identifiable school. (App., infra, 6a). This Court said in *Swann, supra*, 28 L.Ed.2d 554, 569,

> ". . . The construction of new schools and the closing of old ones are two of the most important functions of local school authorities and also two of the most complex . . ."

And, at 570,

> ". . . Our objectives in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, **even when those problems contribute to disproportionate racial concentrations in some schools**. . . ." (Emphasis added.)

Again, it is clear that the "disproportionate racial concentration" in Lincoln Williams did not result from any segregative action on the part of local school authorities, and was beyond their ability to control. Similarly, in the absence of a constitutional violation, the harsh remedy of closing two community

schools should be found to be beyond the authority of the District Court to order.

III. IN VIEW OF NO PARTY HAVING REQUESTED THE HARSH REMEDY IMPOSED, THE SCHOOL BOARD'S OBJECTION TO SUCH HARSH REMEDY, THE DISTRICT COURT'S PRIOR CONSENT DECREE, AND THE FAR LESS ONEROUS ALTERNATIVES AVAILABLE, THE DISTRICT COURT SHOULD HAVE DEFERRED TO THE LOCAL SCHOOL AUTHORITIES.

The power and authority for educating our citizens is reserved to the state by the Tenth Amendment to the United States Constitution. This Court has also said that education is not among the rights afforded either explicit or implicit protection under the federal Constitution. *San Antonio School District v. Rodriguez*, 411 U.S. 1, 35, 36 L.Ed.2d 16, 44, 93 S.Ct. 1278. Accordingly, this Court has also repeatedly held that,

> ". . . No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. See *Wright v. Council of the City of Emporia*, 407 U.S. at 469, 33 L.Ed.2d 51. . . . Thus . . . we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence.' . . ." (*Milliken, supra*, at 418 U.S. 791-792, 41 L.Ed.2d 1089).

Again, in *Swann, supra*, 28 L.Ed.2d 554, 566, the Court said,

> ". . . School authorities are traditionally charged with broad power to formulate and implement educational policy . . ."

Also in *Milliken, supra*, the Court expressed its concern that,

> ". . . The District Court will become first, a de facto 'legislative authority' to resolve these complex questions, and then the 'school superintendent' for the entire area. This is a task which few, if any, judges are qualified to perform and one which would deprive the people of control of schools through their elected representatives. . . ." (41 L.Ed.2d 1069 at 1090-91).

If the above standards are still meaningful, then the District Court erred in not deferring to the local school authorities under the circumstances here present. First, no party to this litigation ever requested any relief or remedy with respect to these schools, much less the harsh remedy imposed by the District Court.[7] Secondly, the District Court's Consent Decree of 1976 desegregated the schools in this area, its order was faithfully implemented by the School Board, and there was no evidence in the record before the District Court of any segregative act by the School Board or any constitutional violation with respect to these schools.

Thirdly, and perhaps most importantly, there were several

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[7] It is important to note that, on remand, the private plaintiffs also opposed the closing of Lincoln Williams and Forest Hill schools. At the conclusion of the hearing, Mr. Berry, counsel, for private plaintiffs, told Judge Scott (Tr. June 30, 1981 Proceedings, pp. 89, 90):

> "In behalf of private plaintiffs, I would like to make this statement, that private plaintiffs are not—do not desire to have any school closed up, if we can possibly keep them open . . . I want to make that crystal clear so that no one in the community would believe that private plaintiffs are attempting to close down any school."

constitutionally viable alternatives available to the District Court which had been submitted to it by both the School Board members and the Forest Hill parents.

The first, most immediate, alternative was simply to leave these schools alone. They had already been desegregated by court order in 1976 while the schools in the Alexandria metropolitan area had not. Restructuring of these schools and reassignment of the students in this area was not necessary to desegregation of the Alexandria schools. The only reason the District Court touched these schools was because the Lincoln Williams School in Cheneyville had become what the District Court concluded was a racially indentifiable black school due to white flight.[8] This was acknowledged and approved on appeal after remand by the Court below."[9] The District Court, however, after inappropriately determining to close Lincoln Williams, made its remedy even more harsh by likewise closing Forest Hill, thereby punishing the black and white citizens in Forest Hill by depriving them of their school because of the flight of other citizens from Cheneyville.

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[8] The District Court's original opinion states ". . . the evidence establishes that there is no concentration of white students available in the Cheneyville area to integrate Lincoln Williams Elementary . . . consequently, Lincoln Williams (K-8) must be closed. . . ." (App., infra, 87a). In its opinion after remand, we find the District Court saying ". . . There has been a gradual decline of student population at Cheneyville area . . .; and an almost complete exodus of white students from Lincoln Williams after the 'white school' was integrated with Lincoln Williams in 1975. Poland is the only majority white school district accessible to Lincoln Williams. There was absolutely no likelihood that these students would attend Lincoln Williams when the whites in the Lincoln Williams district had already refused to do so. It was our finding that there was no reasonable prospect that Lincoln Williams could be integrated by clustering or pairing. Consequently, we determined that Lincoln Williams must be closed." (App., infra, 29a).

[9] The Court of Appeals panel majority stated ". . . in arriving at this conclusion in 1980, the Court took into consideration the likely reoccurrence of the 'white flight' phenomenon if Lincoln Williams and Poland were clustered or paired. This rationale was reaffirmed in the Court's post-remand decision. . . ." (App., infra, 7a, Footnote 6).

There were other constitutionally acceptable alternatives before the Court that it could have chosen. Although it is true that a majority of the elected members of the School Board could not agree on one specific plan, it did submit to the Court for its consideration the various alternatives proposed by individual members.[10] Though the District Court stated that it considered such plans,[11] it did not choose to utilize all or any part of them.

Another alternative would have been to reduce the Lincoln Williams School and the Forest Hill School to elementary K-5 schools and send the middle school students from both communities to Carter C. Raymond in Lecompte. The District Court itself noted that sending the high school students from all three (3) communities to Rapides High School had worked. Petitioners respectfully submit that sending the middle school students to Carter C. Raymond in Lecompte would also have worked and would have permitted both Cheneyville and Forest Hill to have a local community elementary school, thereby keeping the smaller and younger children closer to home.

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. **The qualities of mercy practically have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs** as well as between competing private claims. *Hecht Co. v. Bowles*, 321 U.S. 321, 329-330, 88 L.Ed. 754, 760, 64 S.Ct. 587 (1944), cited in *Brown II*,

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[10] See response of School Board of July 28, 1980, individual response of Board member Holloway, and individual response of Board member Kellogg of July 24, 1980; App., infra, 100a-107a.

[11] See Court's original August 6, 1980 opinion, App., infra, 91a; remand opinion of July 22, 1981, App., infra, 34a.

> *supra*, at 300, 99 L.Ed. at 1106. (Emphasis added) (*Swann*, *supra*, 28 L.Ed. 554, at 566).

If this often quoted language is to mean anything at all, it should compel this Court to grant this petition for certiorari. The citizens of Rapides Parish cry out for equity and consideration, by this Court, of "the public interest" and their "private needs."

CONCLUSION

Petitioners recognize that these desegregation cases present District Courts, as well as school boards and citizens, with intractable problems and issues. Petitioners further recognize that this District Court has labored conscientiously in attempting to resolve the issues here present as perceived by it. Petitioners believe, however, that the District Court's decision contains fundamental errors with respect to extremely important issues and unnecessarily and adversely affects the well-being of the many citizens represented by petitioners. Their well-being deserves protection and redress even against honest and conscientious error. The writ should be granted.

Respectfully submitted,

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